

Consultation Proposals

Commercial radio content regulation

Consultation Response

Respondent: Neil Kenlock

Organisation: Tru Bay

Background: Media Executive with a passion for the development of the black community.

- Freelance photographer
- Photo editor on the staff of the West Indian World Newspaper, the first black newspaper, in 1973.
- Managed the Montage Art Studio's photographic department
- Co-founded the Grantham Road project, which arranges weekly classes to teach black youths photography.
- Co-founded Root Magazine, Britain's first glossy black publication, in 1979.
- Founder, shareholder and Director at Choice FM London.
- Directed the planning, launch, and set up of the successful bid for Choice 107.1 FM, North London in 1999.

General response to The Future of Radio consultation

We feel that The Future of Radio is a generally positive document which really seeks to address some of the core challenges and opportunities currently facing the sector in the foreseeable future.

Ofcom's stated commitment to the 'plurality of provision of commercial radio services alongside the BBC' is welcomed and we feel that your efforts to nurture 'a diversity of programming on commercial radio catering for different tastes and interests' is positive. We support your call for a reduction in the level of regulation of the analogue commercial local radio sector.

We support the findings of your research indicating that most people think that local radio stations should be county, town or city sized rather than smaller and think that the proposal that levels of localness should be proportionate to the size of the station. However it is our feeling that the very concept of what constitutes 'localness' and therefore what excites people about locally connecting radio should be examined in order that what is prescribed for stations can be both more helpful to them in terms of guiding the nature of their locality based content.

We question the notion that 'local programming is expensive' (para 1.14) we believe there are ways we can learn from how the pirates operate and perhaps give stations local voices at less than prohibitive expense.

We support the proposal for separate reviews for AM and FM in 2009 and 2012 respectively.

We welcome Ofcom's proposal to simplify the statutory selection criteria and the regulation of funding and ownership.

It would be useful if you could identify which are the 'alternative uses for the spectrum', which would require 'significant contiguous amounts of the current spectrum to be available simultaneously'

We believe it is essential for Ofcom to be far clearer about its plans for a transition path for small-scale commercial stations and community stations to digital. Whilst we understand that no existing analogue station should be guaranteed digital migration, we strongly object that your duty should only be to 'secure the provision of small radio stations which deliver public purposes'.

We are glad that you have acknowledged that the majority of illegal broadcasters do not fit easily into the category of community radio services as defined in the internationally accepted definition of that term. However it is key that Ofcom unearth what it is about the pirate radio model that attracts such a wide listenership (Ofcom research pointing to almost one in five Londoners tuning into illegal stations). It is interesting that by your own analysis these stations are considered by their listeners to provide community benefit but yet naturally model themselves as 'aspirant' commercial stations. Having a more rounded view of why this model is so successful for both listeners and those who provide the service is crucial.

We believe that if Ofcom is serious about addressing the issue of illegal broadcasting in the UK it must understand that the pirate market will not be satiated by the medium of community radio, and that an effective solution will in all likelihood necessitate Ofcom being flexible enough to find a very different kind of solution than has been tried before.

It is also important to note that whilst we believe that having community focused radio stations whose first imperative is not commercial is positive. However we refute the notion that making a profit necessarily precludes a station's from delivering social benefit.

We look forward to participating in and contributing to the consultation on Community radio when it is launched into the public domain. We agree with many of the principles which you identify with community radio, we think it is positive that such stations be for the good of members of the public, but we think that those communities should be able to define what is 'good' for themselves rather than having to subscribe to an idea of good and 'social gain' imposed from outside.

Proposal 1

The regulation of content on analogue commercial radio and on DAB digital radio should be aligned, at the appropriate time.

NK: In general terms I support this proposal

This consultation seeks views on this proposal and considers options for

delivering it. Where these relate to potential legislative changes, Government may wish to consider them in the future, should the possibility of introducing new legislation be taken forward. Having considered the options, Ofcom's initial suggestions are as follows:

1.1: The timing of any changes to Format and localness regulation of commercial radio should be linked to a threshold based on the overall proportion of listening accounted for by digital platforms. For those changes, which could be made without new legislation, we suggest an appropriate threshold would be 33%, but welcome views as to alternatives.

1.2: Analogue local commercial radio station Formats should be streamlined to

bring them into line with the level of detail in DAB Formats, when the relevant digital listening threshold is met.

1.3: Ofcom could give guidance on appropriate minimum levels for the amount of locally-made programmes and local material (local programming) required to be provided by analogue local commercial stations, according to the size and type of station. Local material should be locally made within the licensed area unless subject to any agreement for co-location of studios, according to specified criteria. These changes should be introduced when the relevant digital listening threshold is met.

NK: We believe there needs to be a general re-thinking and reformulation of what constitutes local programming as there seems to be a disconnect between what Ofcom has stipulated that stations comply with in the past and what genuinely engages people and excites them about being a member of a local community. We think it would help if there were a shift in use of language from a focus on 'local material' to that of 'local approach'.

1.4*: It is properly the domain of Government and Parliament to determine Ofcom's statutory duties. Ofcom's existing statutory duty to ensure the provision of an appropriate amount of local material with a suitable amount of local production applies only to each analogue commercial local radio station. Our analysis suggests that, as digital listening increases Ofcom should be allowed to look at the provision of local material across all local commercial stations in an area on a platform neutral basis for broadcast radio (i.e. analogue and DAB digital radio). Government may also wish to consider whether this duty should apply to all future broadcast platforms, which seek to replace analogue radio listening, such as DRM, but not to platforms intended primarily to deliver other types of services such as digital television.

1.5*: Government may wish to consider bringing forward proposals to amend the existing legislation to remove the Format restrictions on national analogue radio, at an appropriate time, if it considers that DAB national services will provide the required diversity of national stations.

1.6: The requirements on DAB digital radio to offer national (UK-wide) services which appeal to a variety of tastes and interests should remain.

Note: We believe that suggestions marked with an asterisk would require new legislation

Commercial radio ownership regulation

Proposal 2

There may be a case for Government to consider bringing together the ownership rules regarding analogue commercial radio and DAB digital radio into a single set of rules as the proportion of listening accounted for by digital platforms increases.

NK: No comment

This consultation seeks views on this proposal and considers options for delivering it which Government may wish to consider in the future, should the possibility of introducing new legislation be taken forward. Having considered the options, Ofcom's initial suggestions are as follows:

2.1*: The timing of any changes to ownership regulation of commercial radio could be linked to a threshold based on the overall proportion of listening accounted for by digital platforms. This may be the same threshold as that considered above for changes to content regulation.

2.2*. There could be a single set of ownership rules based on defined ownership areas which would be applied across analogue and DAB platforms, once the relevant digital listening threshold is met.

2.3*: The local DAB multiplex ownership rules could be changed so that no person can control more than one DAB multiplex designed to cover substantially the same area.

2.4: The rule that no one person can control more than one national DAB multiplex could be retained.

2.5*: The cross-media ownership rules could be based on defined ownership areas, as per 2.2 above; and analogue and digital radio services could be considered together in this regard.

Note: We believe that suggestions marked with an asterisk would require new legislation

The ability to free-up spectrum

Proposal 3

While we do not currently propose that a date should be set for the switch-off of analogue (FM and AM) radio, we should aim to maximise flexibility in the licensing system so as to be able to free-up that spectrum for other uses, when the time is right.

NK: No comment

This consultation seeks views on this proposal and considers options for delivering it which Government may wish to consider in the future, should the possibility of introducing new legislation be taken forward. Having considered the options, Ofcom's initial suggestions are as follows:

3.1*: So as to maximise DAB coverage for local radio services, Ofcom should be given the power to increase the licensed areas of existing DAB local multiplex licences where such increases would not be significant, and to approve significant increases in exceptional circumstances.

3.2: In order to achieve the flexibility to use the spectrum currently used for

analogue radio for other things, we would need to have the ability to clear the spectrum of many, if not all, current users in each waveband simultaneously by setting a common end-date for existing services. We propose two reviews to set such common end-dates: - VHF Band II (FM) - a review should take place in 2012, or when listening on digital platforms accounts for 50% of all listening, whichever is the earlier, to consider the future use of VHF Band II and determine a common end-date for existing FM services (commercial and BBC). - Medium wave (AM) - a review should take place in 2009 to consider the future use of medium wave and determine a common end-date for existing AM services (commercial and BBC).

3.3*: The spectrum currently used for analogue AM and FM radio should be available to use in other ways (if and when it is no longer required for analogue radio broadcasting), using market mechanisms unless there are strong public policy reasons to allocate the spectrum for a specific use.

3.4: We propose that licences re-awarded under the current statutory framework should be granted with an expiry date of 31 December 2015.

3.5*: The 12-year renewal provision for local and national analogue licensees (both FM and AM) which also provide a station on a relevant DAB radio multiplex service should be removed. (This would not apply retrospectively to licensees which have already been granted such a renewal.)

3.6*: Ofcom should be given the power to: - extend all existing licences for an indefinite period, so as to achieve a common end-date for all licences; - include conditions in all new or extended licences allowing for their termination by Ofcom with at least two years' notice, so as to allow the spectrum to be taken back for other uses. The appropriate termination date should be decided by future reviews, which should also have a view to maximising flexibility for the use of the spectrum and take into account public policy needs.

Note: We believe that suggestions marked with an asterisk would require new legislation

New ways of licensing radio broadcasting

Proposal 4

Radio services, including those designed to deliver public purposes, should be able to be licensed on any spectrum in a technology neutral way.

NK: No Comment

This consultation seeks views on this proposal and considers options for delivering it which Government may wish to consider in the future, should the possibility of introducing new legislation be taken forward. Having considered the options, Ofcom's initial suggestions are as follows:

4.1*: Ofcom could have the ability to license radio services designed to deliver public purposes without having to determine beforehand which technology they must utilise. Ofcom could also grant licences for the provision of national and local terrestrial radio services to prospective providers who have acquired spectrum independently. Such services would not be regulated to secure diversity and/or localness. We suggest that any new licences for the provision of radio services be granted for an indefinite period, and include conditions allowing for their termination by Ofcom with at least two years' notice. Licences would have a guaranteed five-year minimum term.

4.2*: Any new licences which are to be regulated in order to secure defined public purposes could be awarded by auction, but with conditions attached to the licences to secure these purposes.

Note: We believe that suggestions marked with an asterisk would require new legislation.

DAB sound quality

Proposal 5

Ofcom will generally approve a change from stereo to mono in circumstances when it considers that the reduction in sound quality of the service whose technical parameters is being changed is outweighed by the benefits to citizens and consumers of the use to which the freed-up capacity is to be put.

NK. No Comment

Community radio licensing and regulation

Proposal 6

The characteristics of community radio, based around social gain provided by stations on a not-for-profit basis remain key. However, there may be an argument for simplifying the statutory selection criteria, and the regulation of funding and ownership without losing the essence of what community radio has been set up to achieve.

NK: I support the simplification of the statutory selection criteria.

Much information gathering and analysis remains to be carried out before Ofcom produces its final report on community radio for the Secretary of State. In preparation for that, we welcome views on the following initial suggestions regarding the simplification of the existing statutory framework.

6.1*: The characteristics of community radio services, as included in the Community Radio Order 2004, should be retained, but the definition of "social gain" should be reconsidered.

NK: I agree strongly with this proposition

Community radio should not be merely a tool for social inclusion; surely it should also be for sheer enjoyment and freedom of expression. The Department for Culture, Media and Sport stated, "The sector offers huge potential for helping to deliver messages from the centre at the very local level." - This completely misses the point; the sector should be offering huge potential for helping to deliver messages from the periphery to the centre.

6.2*: The statutory criterion regarding the ability to maintain the service should be reconsidered such that Ofcom could be required to have regard to the ability of an applicant to establish and maintain its proposed service for the first year of the licence period.

6.3*: The statutory criterion which requires Ofcom to have regard to the extent to which a proposed service would cater for the tastes and interests of the community to be served should be reconsidered.

NK: We agree

6.4*: The statutory criterion which requires Ofcom to have regard to the extent to which a proposed service would broaden choice should be reconsidered.

6.5*: The statutory criterion which requires Ofcom to have regard to the extent to which there is evidence of demand, or support, for a proposed service should be reconsidered.

6.6: The statutory criterion which requires Ofcom to have regard to the extent to which a proposed service would deliver social gain should be retained.

6.7*: The statutory criterion which requires Ofcom to have regard to the provision that an applicant proposes in order to render himself accountable to the target community should be reconsidered.

6.8*: The statutory criterion which requires Ofcom to have regard to the provisions an applicant proposes to make in order to allow for access by members of the target community to the station's facilities and for their training in the use of those facilities should be reconsidered.

6.9*: It is important for a community radio station not to receive all of its funding from a single non-commercial source. However, it may be that there is a case for increasing or removing the current maximum percentage limit on funding from a single non-commercial source. Ofcom welcomes views as to what the appropriate limit should be.\

6.10*: It would be possible to take into account volunteer time when assessing the turnover of a community radio service. Ofcom welcomes views on this issue and on how the value of such input could be calculated.

6.11: There should be no changes to the categories of person prohibited from holding a community radio licence.

NK: We believe it is important that the categories of person prohibited from holding a community radio license are amended, in particular category e) of Part II Schedule 2. If Ofcom is serious about addressing the problem of illegal broadcasting it needs to provide a route through which people formerly engaged in illegal activity can be employed within the sector legitimately. Commercial radio should acknowledge it's debt to the illegal sector as a hotbed of future mainstream talent, it is well documented how many of the staples of today's airwaves came from the pirate sector including the likes of Chris Moyles, Noel Edmonds and many who came and worked in the initial days of Choice FM.

6.12* The current rule requiring that no body corporate may hold more than one community radio licence should be reconsidered.

NK: I agree strongly with this point

6.13: Ofcom needs to ensure that community radio services operate within the terms of the relevant legislation. The process of feedback has not yet begun, as no station has been on-air long enough. It is not therefore possible to assess the advantages or shortcomings of the existing system. For this reason, Ofcom is not proposing specific alterations to the level of feedback required at this time.

6.14*: Community radio licences should be eligible to be extended for up to a further five-year period, subject to meeting specified requirements, on one occasion only. The period of extension for some licences may be less than five

years, should that be necessary to achieve a common end-date for all analogue radio services.

6.15*: There may be a case for removing all of the current restrictions relating to the economic impact of licensing community radio services. Ofcom will be conducting further assessment in this area, with a view to bringing forward proposals for consultation later in the year as part of our review for the Secretary of State. In the meantime we welcome views on these matters.

NK: We look forward to commenting on these issues

6.16: The coverage of community radio services will still be restricted by frequency availability constraints, and Ofcom will continue to need to weigh up the relative merits of alternative licensees, for example where it might be possible to licence two small stations or only a single larger service, when deciding on the best use of the available spectrum resources.

Note: We believe that suggestions marked with an asterisk would require new legislation.